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11:33 am, Mar 23, 2021

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Tony Caccavale, et al.,	.	Docket #CV-20-974 (GRB) (AKT)
	.	
Plaintiffs,	.	
	.	United States Courthouse
vs.	.	Central Islip, New York
	.	March 5, 2021
Hewlett-Packard Company,	.	3:26 p.m.
et al.,	.	
	.	
Defendants.	.	

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TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For The Plaintiffs:	Steven J. Moser, Esq. Moser Law Firm, PC 5 E. Main St. Huntington, NY 11743
	Paul A. Pagano, Esq. Moser Law Firm, PC 5 E. Main St. Huntington, NY 11743
For The Defendants:	Jeffrey H. Ruzal, Esq. Epstein Becker & Green, PC 875 Third Ave. New York, NY 10022
(Unisys Corporation)	Kenneth W. DiGia, Esq. Epstein Becker & Green, PC 875 Third Ave. New York, NY 10022

(HP, Inc. & Hewlett  
Packard Enterprise, Co.)

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1 THE CLERK: Now calling civil case 20-974,  
2 Caccavale, et al., vs. Hewlett-Packard Company et al.  
3 Counsel, can you please state your appearances for the record?

4 MR. MOSER: Steven J. Moser for the Plaintiffs.  
5 Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. PAGANO: Also Paul Pagano for the Plaintiffs.  
8 Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. RUZAL: Good morning, Your Honor. Jeff Ruzal of  
11 Epstein, Becker & Green for Defendant Unisys.

12 THE COURT: Good morning.

13 MR. DIGIA: Kenneth DiGia, also of Epstein, Becker &  
14 Green for Unisys. Good morning.

15 THE COURT: Good morning.

16 MR. HENNING: And, good morning, Your Honor. Kris  
17 Henning from McCarter & English for Defendants HP, Inc. And  
18 Hewlett Packard Enterprise Company.

19 MS. LEVIN: And this is Ilana Levis, also of  
20 McCarter & English --

21 THE COURT: Go ahead.

22 MS. LEVIN: -- for Defendants HP, Inc. And Hewlett  
23 Packard Enterprise Company. Good morning.

24 THE COURT: Good morning. All right. Well, now  
25 that the dust is settled somewhat, we're geared this morning

1 to get the rest of a discovery schedule in place. So if  
2 you'll recall that I previously limited discovery to just  
3 document exchanges, because of the status of the case at that  
4 time, and the pending motions at the time. I did not permit  
5 the service of interrogatory, so I'm guessing that you  
6 certainly want to serve interrogatories and that's fine. I  
7 would like to know, based on the amended complaint, whether  
8 there is a need at this juncture to serve anymore document  
9 requests as well.

10 Let me start with the Defendants on that issue, and then  
11 I'll come -- work my way back up to Plaintiff's counsel.

12 MR. HENNING: Your Honor, this is Kris Henning from  
13 McCarter & English.

14 THE COURT: Why don't -- yeah, I was -- okay. Go  
15 ahead.

16 MR. HENNING: I'm happy to take a first stab at it.  
17 Kris Henning for Defendants HP, Inc. and Hewlett Packard  
18 Enterprise Company.

19 Your Honor, you are right that in the past discovery had  
20 been limited to document requests. And even more so, my  
21 recollection is document requests that were relevant to the  
22 main Plaintiff's individual claims --

23 THE COURT: Yes.

24 MR. HENNING: -- this is a putative class case. And  
25 so we have some more document requests that we'd like to serve

1 on the Plaintiffs that would be geared more towards the Rule  
2 23 requirements. I expect the same would be true coming back  
3 at us, but of course, I don't want to speak for the folks on  
4 the Plaintiff's side.

5 THE COURT: That's probably a smart assumption, but  
6 we're going to find out. So let me ask counsel for Unisys,  
7 what's your position on this?

8 MR. DIGIA: This is Kenneth DiGia, Your Honor. And  
9 our position would be the same. We also have the issue of we  
10 anticipate that Plaintiffs will be moving for conditional  
11 collective action certification, but --

12 THE COURT: Right.

13 MR. DIGIA: -- our position would be the same as  
14 articulated just by Mr. Henning.

15 THE COURT: Thank you. All right, Mr. Moser.

16 MR. MOSER: Yes. The Defendants are both correct.  
17 We would --

18 THE COURT: Okay.

19 MR. MOSER: We will be serving -- because the  
20 initial document requests were limited only to the named  
21 Plaintiffs, we don't have any class discovery at this point.  
22 So we would be interested in obtaining class-wide discovery.  
23 And we anticipate moving fairly quickly for conditional  
24 certification of the FLSA claims against Unisys. So --

25 THE COURT: All right. Well, then here's what we're

1 going to do, because I want to get things moving here. Today  
2 is the 5th. I'm going to give you until the 19th of March to  
3 serve any additional discovery demands that you intend to  
4 serve documents and interrogatories. The response deadline on  
5 those is April 26th. I will give you a brief period after  
6 those things are served -- the responses are served, to work  
7 out any objections that you have with each other concerning  
8 those responses. But I am going to set a deadline by which  
9 any disputes that are outstanding have to be brought to my  
10 attention so that these things are not lingering.

11 And since you're going to be serving your responses by  
12 April 26th, let me just look at the calendar for a second.  
13 I'm going to give you until May 7th to work out your issues.  
14 And to the extent you haven't resolved the issues at that  
15 point, you can file a Rule 37.1 motion, but the deadline to do  
16 that is going to be May 17th.

17 Now, you'll see an insert and the orders from today about  
18 presenting a dispute to the Court. There's a proper fashion  
19 to do that when it relates specifically to a particular  
20 response to particular document requests or interrogatories.  
21 I expect you to file that format. Essentially, it's -- you  
22 have to first of all state verbatim the request that was made.  
23 Underneath of that, state verbatim the response that you  
24 received. And then underneath of that, your particularized  
25 objection or response as to why you believe you're entitled to

1 the information that you perceive the other side to be  
2 withholding. And that's where you should include any case law  
3 support, if you have it. And keep in mind, these have to be  
4 particularized to the response that was given.

5 Please, if you submit one of these, do not give me a  
6 separate general section on the law. I don't want any  
7 sections on the facts in the case. I will be prepared for all  
8 of those things, I promise you, when I review the motion.  
9 Don't waste your time on those. Go directly to the requests  
10 and the responses, if you would, please.

11 If I don't get them in that format, you're going to put  
12 me in the position of returning them to you, and I don't want  
13 to be in that situation. I'm sure you don't either. All  
14 right? But the last day you can file is 37-1 motion is May  
15 17th. This is the one and only spot where I exempt people  
16 from the page -- sorry, three-page limitation on letter  
17 motions. And the reason I do, though, is probably self-  
18 evident at this point. By the time you get two of these  
19 requests down in the format I've just given you, you're going  
20 to be at the three-page limitation.

21 Having said that, however, this is not an invitation as  
22 I've had other attorneys take it. They send me a 60-page  
23 document with all of the, forgive me, petty little squabbles  
24 over certain items of discovery. So I expect you to work them  
25 out. I will tell you, if I get something along the lines of a

1 60-page motion, you're going to wind up sitting with my law  
2 clerk or someone else I appoint to go through the disputes  
3 with you, until every single one of them is resolved. And I  
4 certainly hope that won't be necessary. I expect more here.

5 Now, I know you have already amended. Once you receive  
6 the responses to the discovery demand, if you still think one  
7 of you, or all of you, or some of you think that you need to  
8 amend the complaint again or the answers, then I don't want  
9 anybody engaging in motion practice until you talk to me. So  
10 if that's the case, I want you to call chambers and set up a  
11 phone conference, and we'll talk through what the nature of  
12 the amendment is. If I think I need briefing on it, I will  
13 give you that opportunity. If I think we can resolve it on  
14 the phone, we'll resolve it on the phone.

15 All right? But I don't want that discussion to linger.  
16 In fact, I'm going to give you a deadline by which you've got  
17 to address this, if you need to address it at all. May 26th.  
18 That's a month after the responses are due. All right. Mr.  
19 Moser, can you give me some sense of when you think you might  
20 be filing your motion for collective action certification?

21 MR. MOSER: I anticipate filing that motion before  
22 April 15th.

23 THE COURT: Okay. All right. Thank you. I would  
24 like to hear from each of you at this point what depositions  
25 you're anticipating need to be taken in the case. So let me



1 start with Plaintiff's counsel. Whose depositions do you plan  
2 to take?

3 MR. MOSER: Well, we would -- rather than  
4 identifying specific individuals, we will be preparing  
5 30(b)(6) notices. We have not yet conferred with opposing  
6 counsel as to which individuals --

7 THE COURT: That's fine.

8 MR. MOSER: -- would be most suitable.

9 THE COURT: That's fine. And I didn't expect  
10 anybody to come with this on the tip of their tongues today  
11 either. I was really just trying to get an idea for  
12 scheduling purposes what we're looking at here. All right?  
13 So that's fine. Anybody else besides the 30(b)(6) reps?

14 MR. MOSER: I don't believe so at this point in  
15 time.

16 THE COURT: All right. Mr. Ruzal or Mr. DiGia, what  
17 about Unisys? What depositions do you think you need to take.

18 MR. DIGIA: We -- of course, the named Plaintiff,  
19 Mr. Sorbie, and other individuals, we'll have to see the  
20 outcome of the collective action, motion, other individuals  
21 who might opt in, and other potential class members. But  
22 right now, certainly Mr. Sorby and these other individuals who  
23 we will identify further as discovery proceeds.

24 THE COURT: That's fine. All right. Yes, and  
25 you're right. And depending on the outcome of motion

1 practice, obviously, your right to depose any opt-ins or class  
2 members is certainly preserved. So, Mr. Henning, how about  
3 you?

4 MR. HENNING: Your Honor, for us, it's all four  
5 Plaintiffs -- all four named Plaintiffs and any people who are  
6 identified in interrogatories from the Plaintiffs as otherwise  
7 having information about the case, the manual worker issue  
8 that seems to be heart of, at least the primary claim of the  
9 case. That's what we see at the moment, Your Honor. So --  
10 and right now, probably a handful or so.

11 THE COURT: All right. Thank you. Just bear with  
12 me for one minute. All right. I'm giving you until September  
13 30th to finish with these 30(b)(6) depositions and the named  
14 Plaintiff depositions. We'll, if we need to, with respect to  
15 any opt-ins, I will deal with that as a separate issue, but I  
16 at least want these primary depositions completed. I mean,  
17 that's four months. That should be ample time for you to get  
18 this done. Okay?

19 I am going to -- I'm going to want to speak with you  
20 again, but I'm going to hold off on scheduling the next  
21 conference until I get the motion papers for the collective  
22 action certification, so that's a meaningful conference when  
23 it takes place. All right?

24 Any other issues? Again, we're clearly not finished, but  
25 that's as far as I want to go with scheduling for today's

1 purposes. Is there anything about discovery going forward  
2 right now, today that you want to bring up that we haven't  
3 touched on yet? And let me give everyone an opportunity to  
4 speak to that. Mr. Moser?

5 MR. MOSER: Yes, Your Honor. As you are aware,  
6 different magistrates handle class-based discovery  
7 differently. Some just have vague -- want the initial  
8 document request and interrogatories to be targeted only  
9 towards the Rule 23 requirements, and then have some type of  
10 bifurcated discovery where after we move for class  
11 certification, we're entitled to further discovery. I don't -  
12 - I just wanted clarification as to whether discovery is  
13 bifurcated or whether we should engage in full blown class and  
14 merits based discovery, and that's what the Court envisioned.

15 THE COURT: Well, I have done it both ways,  
16 depending on what the parties have requested here. One of the  
17 concerns I have is really a two-edged sword. One is I don't  
18 like putting counsel in the position of doing a whole search,  
19 and then turning around and having to do an additional search  
20 after a decision is made on the collective. On the other  
21 hand, if the collective is not approved or the class isn't  
22 approved, then people spent money that they didn't necessarily  
23 have to expend at this point. Have you folks talked to each  
24 other at all as to how -- I mean, whether or not you can agree  
25 to how you want to proceed here?

1 ALL: No, we have not.

2 THE COURT: Okay. All right. Well, let me at least  
3 hear from the Defendants what their preference is.

4 MR. HENNING: Your Honor, this is Kris Henning for  
5 HP Inc. and Hewlett Packard Enterprise Company. We'd  
6 certainly be guided by the Court, but given the Supreme  
7 Court's directive in Dukes and these other class cert cases,  
8 and I should say the FLSA issue is not ours. So I will leave  
9 the Epstein Becker firm --

10 THE COURT: Right.

11 MR. HENNING: -- to talk about that. But the Rule  
12 23 stuff, you know, we know now that there is an intermingling  
13 of merits and class certification discovery. So we're  
14 inclined, subject to seeing the burden, to try to get as much  
15 as we can done, you know, in one process.

16 THE COURT: Right.

17 MR. HENNING: And so we're happy to talk with Mr.  
18 Pagano and Mr. Moser about that. If the burden of sort of  
19 what they're envisioning for everything, it's not that much  
20 difference than the burden that we'd all expect for just the  
21 Rule 23 requirements, then, you know, I think we could  
22 probably work that out and avoid a second bite of the apple  
23 down the road. So happy to talk to them about that, but you  
24 know, we recognize that those things overlap more clearly now  
25 and that --

1 THE COURT: Yes.

2 MR. HENNING: -- you know, as long as the burden is  
3 not enormously different, we'd probably -- we'd prefer to do  
4 this one time.

5 THE COURT: All right. And Mr. Ruzal and Mr. DiGia,  
6 how about Unisys's position?

7 MR. DIGIA: Our position would be similar, you know,  
8 as to what Mr. Henning just articulated, and happy to have a  
9 discussion with Mr. Moser and Mr. Pagano. I guess it gets a  
10 little bit more complicated with the FLSA collective action  
11 motion being made, and perhaps we should have a more fulsome  
12 discussion, we the parties, about it once we see where we're  
13 going to end up with that motion.

14 THE COURT: That's fine. And I urge you, and I'm  
15 going to direct you actually at this point to talk to each  
16 other, and to get this resolved. And this particular issue,  
17 as to the scope of discovery at this point, I really want  
18 resolved within the next -- well, really you need to resolve  
19 it in the next two weeks, because if you're going to serve  
20 demands, obviously they're going to reflect what position the  
21 parties have agreed upon, hopefully that they have agreed  
22 upon. If you can't agree, then you're going to have to get  
23 back to me, and I'll make a determination.

24 But keeping in mind there's the threshold for collective  
25 action certification, obviously is not a high one. We'll see

1 where this goes. But I do want you to all confer and see if  
2 you can come to an agreement on the scope of what you're doing  
3 here. All right? As I said, if not, then you'll come back to  
4 me. That is not going to in any way delay, however, that  
5 March 19th and April 26th set of deadlines that I gave you.  
6 Okay? If you can't agree, you'll go with a more conservative  
7 approach until you get a decision from me. All right? Is  
8 there anything else you want to address today?

9 MR. MOSER: No, Your Honor.

10 MR. HENNING: Your Honor, just one small thing from  
11 me. Sorry for the interruption. Just one small thing from  
12 me. This is Kris Henning again. March 19, our deadline to  
13 serve additional discovery requests, interrogatories, and  
14 document requests, may we include Rule 36 requests for  
15 admissions as well?

16 THE COURT: Yes.

17 MR. HENNING: That's all. Thank you.

18 THE COURT: That is a discovery device. It's a  
19 discovery device. If the -- if your counterparts are not  
20 happy with that, and you really should be talking to each  
21 other about that. If they oppose that, then somebody needs to  
22 get in touch with me and I'll make a ruling. Okay?

23 MR. HENNING: Fair enough.

24 THE COURT: Anything else?

25 MR. DIGIA: Your Honor, this is Ken DiGia from --

1 just from Unisys. One quick question. Mr. Moser indicated he  
2 would -- Plaintiffs would be making their collective action  
3 motion before April 15th. I don't think we've talked about a  
4 schedule --

5 THE COURT: Right.

6 MR. DIGIA: -- for Defendant's opposition and  
7 Plaintiff's reply. Is that something the parties should talk  
8 among themselves about?

9 THE COURT: I usually let the parties work that out  
10 themselves. However, everybody is on the phone today. If you  
11 want to resolve this today, I have no problem with that. And  
12 I do require these motions to be made formally under the  
13 Federal Rules and not by letter motion. So do you want to  
14 discuss it now, or do you want to talk to each other?

15 MR. MOSER: We can probably work it out, Ken.

16 THE COURT: That's fine.

17 MR. DIGIA: Okay. Okay. And if not, I guess we'll  
18 return to Your Honor.

19 THE COURT: Absolutely. All right. Anything else?  
20 Did I miss anybody?

21 MR. HENNING: Just one clarification, Your Honor,  
22 would you want the parties to submit the proposed briefing  
23 schedule so the Court is aware of it?

24 THE COURT: Yeah. What I typically do is ask you  
25 folks to agree, and if you can't, you'll let me know. But if

1     you agree, just send me a letter that says, "This is what  
2     we've agreed to. It's fine." I'll so order it at that point,  
3     but I don't expect any issues, as long as there's an  
4     agreement. Okay?

5             MR HENNING: Very good.

6             THE COURT: Going once. Going twice. Anything  
7     else? All right.

8             MR. MOSER: Nothing more from the Plaintiffs, Your  
9     Honor.

10            THE COURT: All right. Very well. All right. I'll  
11     get this into an order. We'll get it posted up on ECF, and  
12     you'll proceed from there. And as I said, I'll give you a  
13     date for the next conference once I see what's going on with  
14     motion practice here. Okay?

15            MR. MOSER: Very good.

16            MR. DIGIA: Thank you, Your Honor.

17            THE COURT: Good luck moving forward, and thank you  
18     for your cooperation. It's always refreshing for the Court to  
19     see people agreeing to things and moving things forward. So  
20     I'm grateful for that. Meanwhile, listen, please, stay safe  
21     and stay healthy, and have a good rest of the day. Thank you  
22     all.

23            ALL: Thank you, Your Honor.

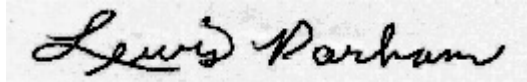
24            THE COURT: Bye now.

25            (Court adjourned)



CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Lewis Parham", is written over a light gray rectangular background.

3/23/21

\_\_\_\_\_  
Signature of Transcriber

\_\_\_\_\_  
Date